

Joint Position - June 2014

European Commission's draft Recommendation on Online Gambling Service Advertising

The undersigned broadcast media associations (ACT, AER and egta) understand that the EC is about to adopt a detailed recommendation which could encourage Member States to introduce advertising restrictions for legal, licensed gambling services in broadcast media.

We first wish to point out that there is no disagreement between the broadcasting sector and the European Commission as to the objectives of protecting minors in this area. Our concerns relate to the impact this recommendation will have on broadcast media, without ensuring a better protection for minors than measures that already exist both at EU and at national level. Any advertising restriction could have an obvious economic impact on the revenues of media businesses in the EU – an impact which must be carefully assessed before the EC proceeds with the Recommendation. Any negative impact on the revenues of broadcasters also risks directly undermining other EU priorities such as promoting media pluralism and cultural diversity, creation of European programme content and the sustainability of the European sport industry. For almost all commercial radios and for numerous TV stations, free-to-air broadcasting is the only viable business model.

We are grateful to have had the opportunity to present our views during the workshop on May 15th, 2013, and also for the recent exchange with officials of the Unit in charge at DG MARKT. As in particular the latter took place under huge time constraint, we feel that a thorough, sufficient and open consultation process on the draft text is needed in order to ensure the best possible outcome – for the consumers as well as the media sector. Without anticipating such a consultation and without presenting a comprehensive list, we highlighted below some of our main considerations to the draft text we have seen in order to substantiate our call for an open and timely appropriate consultation process:

1. The draft Recommendation we have seen was widely based on **questionable assumptions** rather than on objective evidence. This included subjective and unsubstantiated statements or referring generally to example of misleading and aggressive gambling commercial communication without listing or quantifying them.
2. There are already **extensive measures in place at European level** (in the Unfair Commercial Practices directive and Audiovisual Media Services directive) to protect minors. These measures have been thoroughly implemented at national level by media regulators. Absent any evidence that these directives have not been properly implemented, it is hard to see what purpose is served by this additional and very detailed Recommendation.
3. Beyond the EU framework referred to above, at **national level there are additional robust age verification** measures put in place by the commercial gambling industry (sign up checks, credit card check, etc.) which arguably offer a higher level of protection of minors than in traditional lottery operations which are essentially cash based. There are also specific safeguards around the content of advertisements, ensuring

that advertising cannot appeal to (or exploit) young people or feature people appearing to be under 25, as well as rules around the scheduling of advertising – for example in the UK, gambling advertising may not be shown in kids’ programmes or in programmes of particular appeal to kids. The EU and national frameworks between them provide a range of safeguards for a product which, one should not forget, is not actually available to minors in the first place.

4. With regard to the proposed advertising restriction we see an urgent need to conduct a balanced analysis of the negative impact on the media industry on the one hand and the aimed benefits in terms of consumer protection on the other hand. We just would like to present our views on two proposed measures to clarify our concerns:
 - **Warning messages:** Warning messages in advertising in broadcast media are not a suitable or sufficient instrument due to the short duration of a broadcasting advertisement. In particular in radio advertising additional information is likely to miss its aim to inform the consumer – Empirical data showed that warning messages were considered as “oppressive”, and lead listeners to “tune out” metaphorically, if not literally, in the worst case scenario (the Navigator for the UK Radio Advertising Bureau – Radio commercials and wealth warnings);
 - **Time limits in broadcasting media:** It is hard to see how setting specific time for advertising on broadcasting media only would address the purported issue of children accessing commercial communication for gambling if its impact is merely to shift advertising spend onto competing media which are not regulated as tightly. If the content of advertising should not encourage gambling of minors, there is no need for additional limits on broadcasting time. In any case, setting time limits could equate to a ban on radio advertising, as radio has one, maybe two, peak listening times during the day – ‘breakfast’ (between 6 and 9AM) and ‘drive’ (between 4 to 6PM).
5. We are also concerned about the suggestion to put a duty on the media service operators to verify the authorisation of a gambling operator to offer his services in a Member State. As a principle throughout the EU, there is no general duty for a media service to check the overall legality of an operator before its advertising is being published. A responsibility of the media can only be established where an advertising is obviously illegal. Any further duties to individually control advertising placed by third parties would endanger the functioning of the media in its daily work.

We hope we get the opportunity to discuss more positive means for advertising and broadcasters to contribute to the increased protection of consumers with the Commission before the Recommendation is adopted.

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